

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3991 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI AMBALAL PATEL

Versus

EXECUTIVE ENGINEER

Appearance:

MR A B Munshi for Mr AJ PATEL for Petitioner

MR RC JANI for Respondent No. 1

Mr Uday Bhatt for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 12/07/1999

ORAL JUDGEMENT

Admit. Mr R C Jani, learned Advocate waives service of notice of admission on behalf of respondent No.1. Mr Uday Bhatt, learned AGP waives service of notice of admission on behalf of respondent No.2.

By consent of the learned Advocates for the

parties, this Appeal is heard and finally disposed of today.

2. The appellant who is the original claimant has filed this Appeal under Section 54 of the Land Acquisition Act, 1894, read with section 96 of the Code of Civil Procedure for enhancement of compensation challenging the judgment and award dated November 28, 1997 of the learned Assistant Judge, Mehsana in Land Acquisition Reference case No.773/90.

3. By the impugned award, the Reference Court awarded compensation for the acquired lands of the appellant situated at Village Jaspur, Taluka Kalol at Rs. 40/- per sq.metre.

4. The Executive Engineer, Narmada Yojana, Main Canal Construction Division, Ahmedabad proposed for permanent acquisition of the lands situated at Village Jaspur, Taluka Kalol for the public purpose of Narmada Canal. The said proposal was scrutinised by the Government and notification under section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') was published on December 3, 1985. After following the due procedure, notification under section 6 of the Act was published on May 26, 1987. The persons interested in response to the notice issued under section 9(3) of the Act, lodged their claim before the Land Acquisition Officer, who claimed compensation at the rate of Rs.150/per sq.metre. The Land Acquisition Officer, after considering the material produced before him, made award on May 17, 1989 offering compensation for the acquired land at Village Jaspur at the rate of Rs.3/- per sq.metre. The appellant was of the opinion that the compensation offered by the Land Acquisition Officer was inadequate, therefore, he filed written application under section 18 of the Act requiring the Land Acquisition Officer to refer the matter to the District Court, Mehsana, for the purpose of determination of compensation. The matter was referred to the District Court, Mehsana, where it came to be numbered as Land Acquisition Reference Case No.773/90.

5. Land Acquisition Reference Case No.773/90 was tagged with other Land Acquisition Reference Cases and it came to be allotted to the learned Assistant Judge, Mehsana. Before the Reference Court, the appellant claimed compensation at Rs. 150/- per sq.metre. Chimanlal Shambhudas Patel, who was the claimant before the Reference Court in Land Acquisition Reference No.728/90 was examined at Exh.12. During his oral

deposition, he produced previous awards of the adjoining villages rendered by the District Court in Reference Cases filed under Section 18 of the Act. The Reference Court, after considering the oral as well as documentary evidence, mainly relied on the previous award of Village Saij and determined the market price of the acquired lands of Village Jaspur at the rate of Rs.40/per sq. metre. The Reference Court has also given statutory benefit to the appellants under Section 23(1)(a), 23(2) and interest on the amount of compensation. The claimants being dissatisfied with the judgment and award dated November 28, 1997 passed by the learned Additional Asstt.Judge, Mehsana in Land Acquisition Reference Case No.773/90, have filed this appeal for enhancement of compensation at the rate of Rs.72/- per sq. metre.

6. Learned Advocate for the appellants had supplied a copy of the deposition of witness Chimanlal Shambhudas Patel and other relevant documentary evidence during the hearing of this appeal, and therefore, this Court did not call for Record and Proceedings from the trial court.

7. It is submitted by the learned Advocate for the appellants that the Division Bench of this Court, in a group of First Appeals namely, F.As. Nos. 43/98 to 54/98 with F.A. Nos. 300/98 to 314/98 with F.As. Nos. 315/98 to F.A. No.328/98, by judgment and order dated June 28, 1999 has determined the market price of the acquired lands of village Jaspur, at the rate of Rs.52/per sq. metre. It is submitted that the notification which was the subject matter of the First Appeals before the Division Bench under section 4(1) of the Act was also issued on December 3, 1985, whereas the present Appeal was in respect of the lands acquired by the same notification under section 4(1) of the Act dated December 3, 1985. The learned Advocate, therefore, submitted that the Division Bench has taken into consideration the previous award of the surrounding villages viz; Saij, Jamiatpura, Dantali, Village Khoraj and Dhanaj and had determined the market value of the acquired lands of village Jaspur at Rs. 52/- per sq. metre.

8. It is settled principles as laid down by the Apex Court and followed by different High Courts that previous awards of the Reference Court and the High Court provide good guide for determination of the market value of the lands which are similarly situated having similar fertility and the notification under section 4(1) of the

Act issued in the near proximity of time. The acquired lands which were the subject matter in the group of First Appeals decided by the Division Bench on June 28, 1999 were also of village Jaspur and were acquired for the same public purpose by the notification under Section 4(1) of the Act on December 3, 1985. The lands acquired which are the subject matter of the present appeal is also situated at village Jaspur and came to be acquired for the same public purpose of Narmada Yojana by notification under Section 4(1) of the Act on December 3, 1985, and therefore, in my opinion, the judgment of the Division Bench rendered in F.A. No.443/98 and other allied matters, provide good guide for fixing market value of the acquired lands of this appeal. It may be stated that this appeal was separated from the group of First Appeal which came to be decided by the Division Bench as the claim involved in this appeal was below Rs. One lakh. Taking into consideration, the facts and situation of the case, in my opinion, the market value fixed by the Division Bench of the acquired lands will provide good guide for the determination of the market value of the acquired lands.

9. In the operative part of the impugned judgment and award, reference court has ordered that the acquiring authority shall pay additional compensation to the claimants as shown in Annexure-A attached to the judgment with running interest at the rate of 9 per cent per annum for the first year from the date of award and for subsequent period till the date of payment, with running interest at the rate of 15 per cent per annum with proportionate costs. A bare look at Annexure-A which forms part of the impugned award makes it evident that the additional compensation determined by the reference court as payable, also includes solatium on the additional amount of compensation payable under section 23(1-A) of the Act. The appellant-claimant shall be entitled to additional amount of compensation as envisaged by section 23(1-A) of the Act. However, it is clarified that no solatium or interest shall be payable on additional amount of compensation as envisaged by Section 23 (1-A) of the Act in view of the judgment of the Supreme Court in the case of State of Maharashtra v. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) SC 583. The pertinent observations made by the Supreme Court in para 7 of the reported decision are as under:

"It would thus, be seen that the additional amounts envisaged under sub-sections (1-A) and (2) of Section 23 are not part of the component

of the compensation awarded under sub-section (1) of Section 23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under Section 28 of the spreading of payment of interest for one year from the date of taking possession of 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso.

Therefore, the operative part of the order insofar as it directs the appellants to pay the amounts envisaged under Section 23(1-A) and solatium under Section 23(2) of the Act on the amount payable under section 23(10-A) of the Act is concerned, will have to be set aside and are hereby set aside. "

10. The directions given by the Reference Court that 5% of the amount from the compensation payable to the claimant in respect of new tenure land is hereby set aside in view of the pronouncement of the Apex Court in the decision of AIR 1996 SC 904.

11. As a result of foregoing discussion, this appeal is partly allowed. The market price of the acquired lands of the appellant situated at village Jaspur is determined at the rate of Rs.52/- per sq. metre. The appellant shall be entitled interest at the rate of 9% per annum for the first year from the date of award and 15% per annum thereafter till the date of payment on the additional amount of compensation with proportionate costs. However, no solatium or interest shall be payable on the additional amount of compensation payable under Section 23(1-A) of the Act and the said direction is hereby set aside. Rest of the directions given by the Reference Court regarding payment of solatium, interest, etc. are not disturbed and are hereby upheld. There shall be no orders as to costs. The office is directed to draw decree in terms of this judgment.

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msp.

** corrections in paragraphs No.9 and 11 are carried

out as per speaking to minutes order dated
29.7.1999.